

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES STAPLES, et al.,

Plaintiffs,

v.

DEPARTMENT OF SOCIAL AND HEALTH
SERVICES, an agency of The State of
Washington,

ROBIN ARNOLD WILLIAMS, In her official
capacity as Secretary, and in her individual
capacity,

KATHLEEN HARVEY, In her official capacity
as Regional Administrator, and in her individual
capacity,

PATRICIA LASHWAY, In her official
capacity as Regional Administrator, and in her
individual capacity,

MICHAEL TYERS, In his official capacity as
Regional Administrator, and in his individual
capacity and

ONE OR MORE JOHN DOES,

Defendants.

Case No. C07-5443RJB

ORDER ON PLAINTIFFS' MOTION
FOR RELIEF FROM DEADLINE
IMPOSED BY COURT ORDER AND
MOTION TO FILE AMENDED
COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF

This matter comes before the court on plaintiffs' Motion for Relief from a Deadline Imposed
by Court's Order and Motion to File Amended Complaint for Damages and Injunctive Relief. Dkt.
23. The court has considered the pleadings filed in support of and in opposition to the motions and

1 the file herein.

2 PROCEDURAL AND FACTUAL HISTORY

3 Plaintiffs James Staples, Tabo Mack, Don Cho, and Keith James filed their complaint on
4 August 22, 2007. Dkt. 1. The plaintiffs claimed retaliation and employment discrimination based on
5 race, pursuant to 42 U.S.C. §1981, against all defendants. Dkt. 1 at 12-16. The plaintiffs also
6 claimed violation of their civil rights pursuant to 42 U.S.C. §1983 against defendants Williams,
7 Harvey, Lashway, and Tyers only. Dkt. 1 at 16-17. On December 19, 2007, the court ordered all
8 parties joined by January 18, 2008. Dkt. 22. The court denied the defendants' motion to sever on
9 November 27, 2007, in order to afford the plaintiffs the opportunity to conduct discovery to
10 determine whether the claim of agency-wide discrimination is supported by the evidence. Dkt. 19.

11 The Equal Employment Opportunity Commission (EEOC) issued "right to sue" letters to the
12 plaintiffs on January 25, 2008. Dkt. 23-2 at 1-4. In these letters, the EEOC stated that it would not
13 be able to investigate and conciliate the charge within 180 days and that the plaintiffs may institute a
14 civil action under Title VII. *Id.*

15 The plaintiffs filed the instant motion to amend in part to join their Title VII claims pursuant
16 to 42 U.S.C. §2000(e), et seq. Dkt. 23 at 2. The defendants also request that the complaint be
17 amended so that it may reflect evidence obtained during discovery, and changed facts and
18 circumstances since the filing of the initial complaint. Dkt. 23 at 2. Specifically, the plaintiffs would
19 like the complaint to reflect the allegations that plaintiffs Mack and James were demoted, and that
20 plaintiff Cho's employment has been terminated. Dkt. 23 at 2.

21 The plaintiffs also filed the motion for relief from a deadline imposed by court order in part to
22 request that Ms. Cheryl Allen be joined as a plaintiff. Dkt. 23 at 2. Ms. Allen has been employed by
23 the Department of Health and Human Services (DSHS) as Social and Health Program Manager 4
24 since 1981. Dkt. 23-3 at 12. On or about October 2007, she informed defendants DSHS, Lashway,
25 and Williams that she was filing an employment discrimination complaint with the EEOC. Dkt. 23-3

1 at 13. Ms. Allen had not received a “right to sue” letter from the EEOC at the time the plaintiff’s
2 motion was filed. Dkt. 23-3 at 13.

3 The defendants filed a response opposing the plaintiffs’ motion on February 11, 2008. Dkt.
4 24. The plaintiffs filed a reply to the defendants’ response on February 26, 2008. Dkt. 25.

5 DISCUSSION

6 **1. Motion for Relief from Deadline Imposed by Court Order**

7 On December 19, 2007, the court ordered all parties joined by January 18, 2008. Dkt. 22.
8 By motion filed February 7, 2008, the plaintiffs requested that the court allow Ms. Allen to join this
9 action as a plaintiff. Dkt. 23 at 2.

10 Where a schedule has been set by the court, the plaintiffs’ ability “to amend his complaint [is]
11 governed by Rule 16(b), not Rule 15(a). *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d. 604,
12 608 (9th Cir. 1992). Pursuant to Federal Rule of Civil Procedure 16(b), “a schedule shall not be
13 modified except upon a showing of good cause and by leave of the district judge.” Fed.R.Civ.P.
14 16(b). A plaintiff seeking to amend the complaint after the date specified in the scheduling order
15 must first show “good cause” for the amendment under Rule 16(b). *Id.* If good cause is shown, the
16 party must demonstrate that the amendment is proper under Rule 15. *Id.*

17 In order to determine if there is good cause, a party moving for an amendment of a
18 scheduling order must show (1) that it was diligent in creating a workable schedule; (2) that the
19 scheduling order contains deadlines that have become unworkable notwithstanding the party’s
20 diligent efforts to comply; and (3) that the party was diligent in seeking amendment once it became
21 apparent that a deadline extension was necessary. *Jackson v. Laureate, Inc.*, 186 F.R.D. 605, 607
22 (E.D.Cal 1999).

23 Plaintiffs James Staples, Tabo Mack, Don Cho, and Keith James have demonstrated that
24 they were diligent in their efforts to comply with the court’s schedule regarding the addition of
25 factual allegations to their Title VII claims. The plaintiffs received their “right to sue” letters

1 regarding their Title VII claims from the EEOC on January 25, 2008. Dkt. 25 at 2. The plaintiffs
2 filed the instant motion to add these claims on February 7, 2008. Dkt. 23. In addition, the changed
3 facts and circumstances the plaintiff seek to incorporate into the complaint have occurred since the
4 initial complaint was filed on August 22, 2007. Dkt. 25 at 2. The plaintiffs have brought these
5 developments to the court's attention in a diligent and timely manner.

6 The plaintiffs have not articulated good cause grounds for joining Ms. Allen as a plaintiff,
7 however. Pursuant to Federal Rule of Civil Procedure 20, joinder of a party is appropriate if: (1) the
8 plaintiffs' complaints stem from a common transaction or occurrence and (2) if there is a common
9 question of law and fact. Fed.R.Civ.P. 20. The plaintiffs merely state that Ms. Allen's joinder would
10 cause no prejudice to the defendants, and that the defendants should not be surprised by this request
11 to add her as a plaintiff. Dkt. 23 at 2. The plaintiffs argue that Ms. Allen's factual allegations are
12 "similar" to those of the other four plaintiffs, and that she alleges identical legal claims. Dkt. 25 at 3-
13 4. However, those assertions do not satisfy the joinder requirement that Ms. Allen's case be part of
14 a common transaction or occurrence with the cases of the other plaintiffs in the action. *See*
15 Fed.R.Civ.P. 20. Nor do the plaintiffs allege that DSHS employs a discriminatory policy that applies
16 to all original plaintiffs and Ms. Allen. Because good cause to join Ms. Allen as a plaintiff has not
17 been demonstrated, the parties should not be granted relief from the joinder or parties deadline set
18 forth in the court's scheduling order. *See* Dkt. 22. Moreover, although this court denied the
19 defendants' motion to sever (Dkt. 19), there has been no final determination as to whether the
20 plaintiffs' claims will be tried together.

21 Therefore, the court should deny the plaintiffs' Motion for Relief from a Deadline Imposed
22 by Court's Order to the extent that Ms. Allen may not be joined as a plaintiff. The court should
23 grant the plaintiffs' Motion for Relief from a Deadline Imposed by Court's Order to the extent that
24 plaintiffs James Staples, Tabo Mack, Don Cho, and Keith James may amend their complaint to add
25 additional claims and changed facts and circumstances, as long as there is good cause shown for

1 amending the complaint.

2 **2. Motion to file Amended Complaint**

3 The proposed amended complaint filed by the plaintiffs on February 7th includes Ms. Allen as
4 a plaintiff. Dkt. 23-3. As discussed in the preceding paragraphs (*see supra* at p. 4), this is no longer
5 at issue because the plaintiffs have not shown good cause for relief from the court-ordered deadline
6 to join Ms. Allen as a plaintiff.

7 At issue here is whether the original plaintiffs may file an amended complaint to add
8 additional allegations and changed facts and circumstances. *See supra* at p. 2. Specifically, the
9 plaintiffs wish to amend the complaint to join their Title VII claims with their 42 U.S.C. §§ 1981 and
10 1983 claims. Dkt. 23 at 2. The plaintiffs also seek to amend their complaint to reflect the alleged
11 changes in employment status of plaintiffs Mack, Cho and James. Dkt. 23 at 2. The defendants
12 assert that the plaintiffs may not bring a 42 U.S.C. §1983 claim based upon a violation of the rights
13 secured by Title VII, and therefore, amendment of the complaint to add the Title VII claims would
14 be futile. Dkt. 24 at 6; *citing Learned v. City of Bellevue*, 860 F.2d 928, 933 (9th Cir. 1988). As a
15 result, defendants argue, the amended complaint contains 3 impermissible claims for each of the five
16 plaintiffs which causes the defendants undue prejudice. Dkt. 24 at 6.

17 Only four factors are relevant to whether leave to amend should be granted: (1) undue delay;
18 (2) bad faith or dilatory motive; (3) futility of amendment; and (4) prejudice to the opposing party.
19 *Foman v. Davis*, 371 U.S. 178, 182 (1962). These factors are not of equal weight, and delay alone
20 is enough to deny leave to amend. *United States v. Webb*, 655 F.2d 977, 980 (9th Cir. 1981). The
21 opposing party bears the burden of showing prejudice. *DCD Programs, Ltd. v. Leighton*, 833 F.2d
22 183, 186 (9th Cir. 1987). Prejudice often arises where the opposing party is surprised with new
23 allegations which require more discovery or will otherwise delay resolution of the case. *Acri v. Int'l*
24 *Assn. Of Machinists and Aerospace Workers*, 781 F.2d 1393, 1398-99 (9th Cir. 1986).

25 The plaintiffs have shown that leave to amend is proper regarding the addition of their Title

1 VII claims. The plaintiffs received their “right to sue” letters from the EEOC on January 25, 2008.
2 Dkt. 23 at 2. The plaintiffs state that they were awaiting these “right to sue” letters so that they
3 could properly join their Title VII claims. Dkt. 23 at 2. The plaintiffs allege several violations of
4 Title VII and 42 U.S.C. 1981 in their claims for relief in their amended complaint. Dkt. 23-3 at 14-
5 20. The plaintiffs phrase nearly all of these allegations as violating “[t]itle VII or §1981.” *Id.* The
6 defense’s assertion that plaintiffs in the 9th Circuit may not bring a 42 U.S.C. § 1983 claim based on a
7 violation of the rights secured by Title VII (Dkt. 24 at 6) does not mean that the plaintiff’s Title VII
8 claims are impermissible. Most of the plaintiff’s Title VII claims are referred to in conjunction with
9 §1981, and *Learned v. City of Bellevue*, defendants’ cited law on point, addresses §1983, not §1981.
10 *See Learned v. City of Bellevue*, 860 F.2d 928, 933 (9th Cir. 1988).

11 Pursuant to the pleading requirements in Federal Rule of Civil Procedure 8(a), the plaintiffs’
12 complaint must contain allegations sufficient to show that the plaintiff is entitled to relief.
13 Fed.R.Civ.P. 8(a). The plaintiffs have met this burden regarding their Title VII claims in their
14 amended complaint by alleging general violations of Title VII. Dkt. 23-3. In addition, the EEOC
15 stated that the plaintiffs have a right to pursue civil remedies for their Title VII claims (see Dkt. 25-
16 2). The question of whether the plaintiffs have facts in their favor to prove their claims is more
17 appropriately brought before the court in a dispositive motion. Therefore, the addition of the
18 plaintiffs’ Title VII claims is now appropriate.

19 The plaintiffs have also demonstrated that leave to amend is proper regarding the addition of
20 changed facts and circumstances. The plaintiffs wish to incorporate changed facts and
21 circumstances, such as changes in employment status, which occurred since the filing of the initial
22 complaint. Dkt. 23-2. Pursuant to Federal Rule of Civil Procedure 15(a), the court may allow
23 amendment of the pleadings when justice so requires. Fed.R.Civ.P. 15(a). Changed facts and
24 circumstances, particularly changes in employment status of the plaintiffs, are particularly relevant to
25 this case and will aid both parties in navigating discovery. The danger of delay caused by the

1 addition of this information is outweighed by its significance to the case.

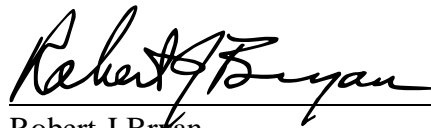
2 The court should grant the plaintiffs' Motion to File Amended Complaint for Damages and
3 Injunctive Relief to the extent that plaintiffs James Staples, Tabo Mack, Don Cho, and Keith James
4 may join their Title VII claims with their 42 U.S.C. §§ 1981 and 1983 claims. The court should also
5 grant the plaintiffs' Motion to File Amended Complaint for Damages and Injunctive Relief to the
6 extent that those plaintiffs may amend the complaint to include changed facts and circumstances.

7
8 Therefore, it is hereby

9 **ORDERED** that plaintiffs' Motion for Relief from a Deadline Imposed by Court's Order and
10 Motion to File Amended Complaint for Damages and Injunctive Relief is **GRANTED** in part and
11 **DENIED** in part. The plaintiffs' request to join Ms. Cheryl Allen as a plaintiff is **DENIED**. The
12 Plaintiffs' request that James Staples, Tabo Mack, Don Cho, and Keith James be allowed to join their
13 Title VII claims with their 42 U.S.C. §§ 1981 and 1983 claims is **GRANTED**. The plaintiffs'
14 request that plaintiffs James Staples, Tabo Mack, Don Cho, and Keith James may include changed
15 facts and circumstances in their amended complaint is **GRANTED**. The plaintiffs shall file a revised
16 amended complaint excluding Ms. Allen as a party and otherwise reflecting the specifications set
17 forth in this order.

18 The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel of
19 record and to any party appearing *pro se* at said party's last known address.

20 DATED this 3rd day of March, 2008.

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23 Robert J Bryan
24 United States District Judge
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